



FILED

10-17-16
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding
Revisions to the California Universal Telephone
Service (Lifeline) Program.

R.11-03-013
(Filed March 24, 2011)

**OPENING COMMENTS OF THE CALIFORNIA ASSOCIATION
OF COMPETITIVE TELECOMMUNICATIONS COMPANIES
REGARDING PROPOSED DECISION OF COMMISSIONER
PICKER ADOPTING REVISIONS TO MODERNIZE AND
EXPAND THE CALIFORNIA LIFELINE PROGRAM BY
ALLOWING VOLUNTARILY PARTICIPATION BY FIXED VOICE
OVER INTERNET PROVIDERS WITHOUT A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

October 17, 2016

Sarah DeYoung
Executive Director, CALTEL
50 California Street, Suite 1500
San Francisco, CA 94111
Telephone: (925) 465-4396
Facsimile: (877) 517-1404
Email: deyoung@caltel.org

Richard H. Levin, Attorney at Law
309 South Main St.
P.O. Box 240
Sebastopol, CA 95473-0240
Tel.: (707) 824-0440
rl@comrl.com

Counsel for CALTEL

Pursuant to Commission Rule 14.3, the California Association of Competitive Telecommunications Companies (“CALTEL”) submits these opening comments on the Proposed Decision of Commissioner Picker (PD).

I. INTRODUCTION

CALTEL’s members are certificated competitive local exchange carriers (CLECs) that offer voice products and services to residential customers as well as small and medium business customers. Some CALTEL member companies currently offer voice services exclusively over circuit-switched networks in Time-Division Multiplexing, or TDM format, others exclusively over IP-enabled networks in Voice over Internet Protocol, or fixed VoIP format, and still others offer both TDM and VoIP products and services.

For those CALTEL members that offer VoIP services, most do so out of one or more certificated entities. These certificated entities are already subject to the performance bond requirements adopted by the Commission in D.13-05-035 (and as described further below, CLECs are required to obtain separate bonds for each and every one of their affiliates). However, several CALTEL members have found it preferable to establish a non-certificated affiliate to offer fixed VoIP services to end user customers.

While CALTEL does not have access to the specific marketing entry plans of its members, one of its primary purposes is to identify and advocate for the removal of barriers that may impede competition in voice and broadband markets. Unless the PD’s requirement that a non-certificated fixed VoIP service provider obtain a performance bond is modified to 1) exempt non-certificated VoIP *affiliates* of certificated carriers, and 2) to set the performance bond at a flat \$25,000 amount, this requirement will unnecessarily constrain competition in the LifeLine services market and create just such a barrier.

II. DISCUSSION

A. Non-Certificated Fixed VoIP Providers that are Affiliates of Certificated Carriers Should Be Exempt from the Performance Bond Requirement

The PD states that the Commission “requires most CPCN holders, wireless registrants, and NDIEC registrants to post a \$25,000 bond”¹ and that “D.13-05-035 exempted Carriers of Last Report (sic) and Uniform Regulatory Framework Carriers from the performance bond requirement.”² These statements are not entirely accurate. In D.10-09-017, the Commission adopted a performance bond requirement for *registration-only* NDIECs of \$25,000 or 10% of intrastate revenues, whichever is greater. In D.13-05-035, the Commission adopted an initial performance bond requirement for CPCN holders and wireless registrants of \$25,000, with plans to consider further the amount of the bond, including a “10% of intrastate revenues” option, in Phase 2 of the proceeding.³ D.13-05-035 also exempted URF *and GRC ILECs* where they serve as Carriers of Last Resort (COLR), *and their wholly or majority owned affiliates*, but not other URF carriers (CLECs), from the performance bond requirement.⁴

D.13-05-035 also failed to adopt CALTEL’s request that CLECs only be required to obtain a single, aggregated performance bond for itself and any wholly or majority owned affiliates.⁵ As a result, some CLECs are required to obtain as many as 5 separate performance bonds to cover each of its operating entities, most of which have been acquired through mergers or transfers of control. Imposing a performance bond on non-certificated fixed VoIP affiliates of

¹ PD at p. 17.

² PD at fn 17.

³ D.13-05-035 at OPs 3, 6 and 22.

⁴ D.13-05-035 at OP 5. The Decision also exempted Cox where it serves as a COLR, but CALTEL notes that the Commission recently approved Cox’s application to end its COLR obligations in Resolution T-17526.

⁵ CALTEL Opening Comments on Commissioner Sandoval’s Proposed Decision, R.11-11-006, dated November 7, 2012 at pp. 7-8.

certificated carriers extends this already inequitable and discriminatory treatment of CLECs and their affiliates. CLECs should not face having to obtain yet another performance bond for a non-certificated fixed VoIP entity in order to offer LifeLine services.

Finally, CALTEL realizes that the existing inequity is not within scope for this proceeding. CALTEL is hopeful, however, that raising the concern in this proceeding to prevent adoption of rules that further disadvantage CLECs may lead to reassessment of the overall policy in the future.

B. The Performance Bond for Non-Certificated Fixed VoIP Providers Should Be Set at a Flat \$25,000 Amount

As noted above, the Commission adopted a \$25,000 performance bond requirement for CPCN holders and wireless registrants in D.13-05-035. Although a “10% of intrastate revenues” option was considered, the Commission ultimately set the “interim” bond at a flat \$25,000 amount in D.13-05-035, and closed the proceeding without completing Phase 2 in 2014.⁶

CALTEL and other parties provided evidence in that proceeding that, for large CLECs, a bond set at 10% of intrastate revenues would create a significant liability that would bear little relationship to the level of fines and penalties the Commission may impose. Some CALTEL members filed confidential information that showed that the cost of obtaining that large of a bond would cost hundreds of thousands of dollars.

The PD does not provide any rationale for setting the performance bond for non-certificated VoIP providers at a different amount than that currently in place for certificated carriers. A maximum bond set at 10% of intrastate revenues would be costly and burdensome for large providers, would discriminate against non-certificated VoIP providers, and ultimately

⁶ D.14-11-004, issued November 12, 2014.

unnecessarily constrain competition in the LifeLine market.

III. CONCLUSION

For the reasons described above, the PD should be modified as documented in Attachment A to exempt non-certificated fixed VoIP service providers that are affiliates of certificated CLECs from having to secure a separate performance bond.

Respectfully submitted,

October 17, 2016

/s/ Richard H. Levin

Sarah DeYoung
Executive Director, CALTEL
50 California Street, Suite 500
San Francisco, CA 94111
Telephone: (925) 465-4396
Email: deyoung@caltel.org

Richard H. Levin, Attorney at Law
309 South Main St.
P.O. Box 240
Sebastopol, CA 95473-0240
Tel.: (707) 824-0440
rl@comrl.com

Counsel for CALTEL

Attachment A

Recommended Change to PD, at pp. 17-18:

The Commission requires most CPCN holders, **and** wireless registrants, ~~and NDEC registrants~~ to post a \$25,000 bond. We similarly shall require California LifeLine non-certificated fixed-VoIP service providers that are approved to offer California LifeLine service **and who are not affiliates of certificated carriers** to obtain a performance bond of at least \$25,000 ~~or 10% of the provider's reported annual intrastate revenues, whichever is greater.~~

Recommended Change to Footnote 17:

¹⁷ D.13-05-035 exempted ~~Carriers of Last Resort~~ and Uniform Regulatory Framework and General Rate Case **ILECs where they serve as Carriers of Last Resort, and their wholly and majority owned affiliates,** from the performance bond requirement.

Recommended Additions to Findings of Facts:

Some non-certificated fixed VoIP providers are affiliates of certificated URF carriers.

Recommended Changes to Conclusions of Law:

23. The Commission should require all fixed-VoIP service providers who wish to offer California LifeLine **and who are not affiliates of certificated carriers** to post a performance bond of \$25,000 ~~or 10 percent of the carrier's reported annual intrastate revenues, whichever is greater.~~

Recommended Changes to Ordering Paragraphs:

6. Before offering California LifeLine Service, a registered Fixed-Voice over Internet Protocol Provider without a Certificate of Public Convenience and Necessity that offers California LifeLine Service shall submit a Tier 3 advice letter to the Communications Division demonstrating:

...

m) Compliance with the Performance Bond requirement, **if applicable.**

14. All California LifeLine Fixed Voice over Internet Protocol Providers without a Certificate of Public Convenience and Necessity **and who are not affiliates of certificated carriers** shall post a bond at the minimum bond requirement level of \$25,000 ~~or 10 percent of a carrier's reported intrastate revenues, whichever is greater.~~

Prior to offering California LifeLine service, a copy of the executed bond must be provided to the Communications Division with the Tier 3 advice letter. Providers shall not allow the performance bond to lapse during the period California LifeLine service is provided. Providers shall submit a Tier 1 advice letter to the Director of the Communications Divisions annually, but not later than March 31, to demonstrate continued compliance with the performance bond requirement.